

**LODI CITY COUNCIL
REGULAR CITY COUNCIL MEETING
CARNEGIE FORUM, 305 WEST PINE STREET
WEDNESDAY, SEPTEMBER 20, 2006**

C-1 CALL TO ORDER / ROLL CALL

The City Council Closed Session meeting of September 20, 2006, was called to order by Mayor Pro Tempore Johnson at 5:07 p.m.

Present: Council Members – Beckman, Hansen, Johnson, Mounce, and Mayor Hitchcock (arrived at 6:36 p.m.)

Absent: Council Members – None

Also Present: City Manager King, City Attorney Schwabauer, and Interim City Clerk Perrin

C-2 ANNOUNCEMENT OF CLOSED SESSION

- a) Actual litigation: Government Code §54956.9(a); one case; Peter Rose et al. v. the City of Lodi, et al.; United States District Court, Eastern District of California, Case No. 2:05-CV-2232 GEB/PAN and consolidated cases
- b) Conference with Blair King, City Manager, and Jim Krueger, Deputy City Manager (Acting Labor Negotiators), regarding Lodi Professional Firefighters and Police Mid-Management, pursuant to Government Code §54957.6
- c) Actual litigation: Government Code §54956.9(a); one case, City of Lodi v. Michael C. Donovan, an individual; Envision Law Group, LLP, et al., San Francisco, Superior Court, Case No. CGC-05-441976
- d) Actual litigation: Government Code §54956.9(a); one case; Hartford Accident and Indemnity Company, et al. v. City of Lodi, et al., Superior Court, County of San Francisco, Case No. 323658
- e) Actual Litigation: Government Code §54956.9(a); one case; People of the State of California; and the City of Lodi, California v. M & P Investments, et al., United States District Court, Eastern District of California, Case No. CIV-S-00-2441 FCD JFM

C-3 ADJOURN TO CLOSED SESSION

At 5:07 p.m., Mayor Pro Tempore Johnson adjourned the meeting to a Closed Session to discuss the above matters.

The Closed Session adjourned at 6:56 p.m.

C-4 RETURN TO OPEN SESSION / DISCLOSURE OF ACTION

At 7:07 p.m., Mayor Hitchcock reconvened the City Council meeting, and City Attorney Schwabauer disclosed the following actions.

Items C-2 (a) through (e) were discussion only.

In regard to Item G2 (e), settlement direction was given with regard to the Northern Plume; no reportable action was taken.

A. CALL TO ORDER / ROLL CALL

The Regular City Council meeting of September 20, 2006, was called to order by Mayor Hitchcock at 7:07 p.m.

Present: Council Members – Beckman, Hansen, Johnson, Mounce, and Mayor Hitchcock

Absent: Council Members – None

Also Present: City Manager King, City Attorney Schwabauer, and Interim City Clerk Perrin

B. INVOCATION

The invocation was given by Barbara Taylor, Lodi Police Chaplains.

C. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Mayor Hitchcock.

D. AWARDS / PROCLAMATIONS / PRESENTATIONS

D-1 Awards – None

D-2 Proclamations – None

D-3 (a) Bob Bechill with the Lodi Area All Veterans Plaza Foundation presented a check to Mayor Hitchcock in the amount of \$10,000 as payment on loan from the City of Lodi. Mr. Bechill invited the public to attend the Veterans Day event at the Plaza on November 11 at 11 a.m., at which Mayor Pro Tempore Johnson, who is also a Marine Corp. veteran, will serve as guest speaker.

E. CONSENT CALENDAR

In accordance with the report and recommendation of the City Manager, Council, on motion of Council Member Beckman, Mounce second, unanimously approved the following items hereinafter set forth **except those otherwise noted**:

E-1 Claims were approved in the amount of \$6,578,627.09.

E-2 The minutes of August 1, 2006 (Shirtsleeve Session), August 8, 2006 (Shirtsleeve Session), August 15, 2006 (Shirtsleeve Session), August 29, 2006 (Shirtsleeve Session), and September 5, 2006 (Shirtsleeve Session) were approved as written.

E-3 Approved the plans and specifications and authorized advertisement for bids for Domestic Outfall Sewer Pipeline Condition Assessment.

E-4 Authorized staff to issue requests for qualifications and develop a qualified-vendor database for financial planning, electric utility rates, power supply planning, and/or engineering services for the Electric Utility Department for future projects.

E-5 Approved request for proposals for plans examining and building inspection services.

E-6 Adopted Resolution No. 2006-171 establishing Dell, M P C, and Hewlett Packard brands as the standards for desktop and notebook computers purchased for use in the City.

E-7 Adopted Resolution No. 2006-172 appropriating additional funds for Change Order No. 14 for Lower Sacramento Road Widening Project, Kettleman Lane to Harney Lane, in the amount of \$40,925.

E-8 Adopted Resolution No. 2006-173 accepting improvements under "White Slough Water Pollution Control Facility Holding Pond No. 1 Rehabilitation, 12751 North Thornton Road" contract and appropriating additional funds in the amount of \$1,500.

E-9 Approved amendment to the Northeastern San Joaquin County Groundwater Banking Authority Joint Powers Agreement extending the term two years.

- E-10 "Adopt resolution amending the Electric Utility Department Rules and Regulations Nos. 13, 15, and 16 to recover the full cost of expanding the electric distribution system from new electric load" was **removed from the Consent Calendar and discussed and acted upon following approval of the Consent Calendar.**
- E-11 Accepted for filing the draft 2006 resolution amending the list of boards, commissions, City employees, and officers subject to Conflict of Interest reporting requirements for publication and public comment (pursuant to Government Code §87306.5).
- E-12 Adopted Resolution No. 2006-174 amending the Memorandum of Understanding with the Lodi Professional Firefighters for the period July 1, 2006 through June 30, 2007.
- E-13 Adopted Resolution No. 2006-175 amending the Memorandum of Understanding with the Lodi Police Mid-Management Organization for the period July 1, 2006 through June 30, 2007.
- E-14 Adopted Resolution No. 2006-176 appointing Randi Johl to the position of City Clerk and approving employment agreement.
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ACTION ON ITEM REMOVED FROM THE CONSENT CALENDAR

- E-10 "Adopt resolution amending the Electric Utility Department Rules and Regulations Nos. 13, 15, and 16 to recover the full cost of expanding the electric distribution system from new electric load"

NOTE: Due to a potential conflict of interest stemming from his employment with the Building Industry Association (BIA) of the Delta, Council Member Beckman abstained from discussion and voting on this matter and vacated his seat at the dais at 7:15 p.m.

PUBLIC COMMENTS:

- Kevin Sharrar, Executive Director of the BIA of the Delta, reported that, according to the realtors association, the median sales price of homes in Lodi has increased 39% in the last two years and that, in the second quarter of 2006, San Joaquin County ranked number 12 as the least affordable county in the nation. He expressed concern about adding further homebuyer fees and whether it would be counterproductive to facilitating housing that is as affordable as possible in Lodi. Mr. Sharrar requested that the building industry be given an opportunity to review this proposal and discuss the matter with City staff prior to any Council action; therefore, he requested that the matter be tabled until the regular City Council meeting of November 1.

City Manager King clarified that items E-10 and I-2 were both related to the cost of providing electric service to new development—E-10 was a policy change and not a fee; whereas, I-2 is related to an impact fee, which is consistent with the requirements of Assembly Bill 1600. He suggested that Council either hear the report and take action on this item or hold it over and discuss both items simultaneously.

In response to Council Member Hansen, Electric Utility Director Morrow stated that research done by staff indicates that the standard among electric utilities is to assess the cost of extending the electric system to serve new growth and development to those that cause the expenditure. He added that the exception is Pacific Gas & Electric (PG&E), which is due to its regulated status. PG&E has the potential to receive refunds, which it returns to the rate base in order to receive a rate of return. Lodi and similar municipal utilities are "not for profit" organizations and are unable to do so; therefore, utilities pass these costs onto the developers.

Mayor Pro Tempore Johnson suggested that both Items E-10 and I-2 be held over in order to give staff the opportunity to meet with the BIA and other interested parties, to which Council Member Hansen concurred.

Mayor Hitchcock expressed support for moving forward with this matter as it was previously presented to Council and was appropriately posted.

MOTION #1 / VOTE:

The City Council, on motion of Council Member Hansen, Johnson second, voted to carry over this item to the regular City Council meeting of November 1, in order to give staff the opportunity to meet with interested parties regarding this matter. The motion carried by the following vote:

Ayes: Council Members – Hansen, Johnson, Mounce, and Mayor Hitchcock
Noes: Council Members – None
Absent: Council Members – None
Abstain: Council Members – Beckman

Discussion ensued regarding tabling Item I-2 as well, following which Mr. King requested that staff be given the flexibility to select an appropriate time to hear both matters simultaneously, as there were a number of upcoming projects that could cause a conflict in scheduling.

MOTION #2 / VOTE:

The City Council, on motion of Council Member Hansen, Beckman second, voted to reconsider tabling the subject matter to the regular meeting of November 1. The motion carried by the following vote:

Ayes: Council Members – Hansen, Johnson, Mounce, and Mayor Hitchcock
Noes: Council Members – None
Absent: Council Members – None
Abstain: Council Members – Beckman

MOTION #3 / VOTE:

The City Council, on motion of Council Member Hansen, Johnson second, voted to table this item in order to give staff the opportunity to meet with interested parties regarding this matter and return to Council at a future date. The motion carried by the following vote:

Ayes: Council Members – Hansen, Johnson, Mounce, and Mayor Hitchcock
Noes: Council Members – None
Absent: Council Members – None
Abstain: Council Members – Beckman

NOTE: Council Member Beckman returned to his seat at the dais at 7:35 p.m.

F. COMMENTS BY THE PUBLIC ON NON-AGENDA ITEMS

None.

G. COMMENTS BY CITY COUNCIL MEMBERS ON NON-AGENDA ITEMS

- Council Member Mounce presented a report on the League of California Cities annual conference that she recently attended and highlighted the following topics that were covered:
 - How communities will accommodate the baby boomer generation in order to provide housing and various amenities for that segment of the population as it continues to grow;
 - What communities have done in regard to historical preservation and creating additional value to older neighborhoods—she would like to see this matter incorporated into the General Plan update;

- Approaches to saving the Grape Bowl through free enterprise; and
- Cost saving and cutting edge water treatment plants.

Further, Ms. Mounce expressed concern regarding the rehabilitation of single-family units on the east side, stating that many small cottage-type homes are being replaced with large two-story single-family homes, without review from the Planning Commission. She believed that there is a loophole in the process and requested a future item be placed on the agenda to discuss this matter.

In response to Council Member Hansen, Ms. Mounce stated that the property owners do obtain the necessary building permits; however, they are not presently required to go through the planning process, and the surrounding residents are not notified of the type of structure that will be built in its place.

- Council Member Hansen reported that Pacific Gas & Electric (PG&E) has filed an application with the California Public Utilities Commission (CPUC) seeking authority to offer line extension rates to customers that are served by municipally-owned utilities. He stated that the Northern California Power Agency (NCPA) has filed a protest with the CPUC, arguing that its application is contrary to established law, CPUC precedence, and sound public policy, as well as being anti-competitive. Mr. Hansen reported that a new business will soon be locating in Lodi, which will occupy an existing building and bring up to 40 jobs with the promise of more in a short period of time. Further, Mr. Hansen provided an update regarding Senate Bill 1368 concerning California's goal of reducing greenhouse gases and the battle over interjecting another state agency to regulate this mandate versus maintaining local control. There is an effort underway to encourage Governor Schwarzenegger to veto the bill.
- Mayor Pro Tempore Johnson expressed his appreciation to Deputy City Clerks Jennifer Perrin and Jackie Taylor and Administrative Clerk Dana Chapman for their hard work and effort in covering the City Clerk's Office during this interim period, particularly in light of the fact that Lodi is in the midst of a heavy election season. The new City Clerk will be on board in the very near future.

H. COMMENTS BY THE CITY MANAGER ON NON-AGENDA ITEMS

None.

I. PUBLIC HEARINGS

- I-1 Notice thereof having been published according to law, an affidavit of which publication is on file in the office of the City Clerk, Mayor Hitchcock called for the public hearing to consider unmet transit needs in Lodi.

Tiffani Fink, Transportation Manager, reported that the Transportation Development Act requires a public hearing to be conducted annually to address unmet transit needs. There is a process through the San Joaquin Council of Governments (SJCOC) and the Social Service Technical Advisory Committee, which receives the comments countywide, compares them against the definition of an unmet need, and assesses what needs are reasonable to meet. The purpose of this hearing is to determine if there are needs that can be addressed this year or if there are services that need to be modified or are lacking.

Mayor Hitchcock passed along a complaint she received regarding the connection from GrapeLine to the Altamont Commuter Express (ACE) and the fact that there is no longer a direct bus to ACE.

Ms. Fink responded that there has not been a direct service from Lodi to ACE in quite some time, and the Regional Transit District (RTD) now has a downtown transfer center, at which most transportation routes are directed for transfers to another line. Ms. Fink pointed

out that RTD has had significant cutbacks in its time schedules in order to manage its resources and further stated that all routes going to Stockton are handled by RTD.

Mayor Pro Tempore Johnson expressed disappointment with the amount of money and effort being spent to promote ACE and stated that it should not be this difficult for riders to connect with ACE.

Council Member Mounce stated that she received an e-mail message from Anna Hjalmer (filed) expressing her difficulty in getting on the GrapeLine and Dial-A-Ride buses as a member of the disabled community.

Hearing Opened to the Public

- Maria Burkes stated that she works with the disabled population and expressed her concern that the Lodi transit staff does not have an understanding of the developmental state and mental capacity of her clients.

Public Portion of Hearing Closed

Mr. King stated that he recently met with the director of RTD who indicated that it was attempting to improve the issue of coordination, as well as providing the same method of payment whether it be on a City bus or an RTD bus. He further added that RTD is a separate body with a separate governing body, which conducts its own unmet transit needs hearing.

MOTION / VOTE:

There was no Council action taken on this matter.

- I-2 Notice thereof having been published according to law, an affidavit of which publication is on file in the office of the City Clerk, Mayor Hitchcock called for the public hearing to consider adopting a resolution amending the Electric Utility Department Rules and Regulations No. 15 to assess a Transmission and Substation System charge on new developments outside existing City limits as of August 1, 2006.

NOTE: Due to a potential conflict of interest stemming from his employment with the Building Industry Association of the Delta, Council Member Beckman abstained from discussion and voting on this matter and vacated his seat at the dais at 7:59 p.m.

George Morrow, Electric Utility Director, reported that the City presently has four substations that serve existing City boundaries and will accommodate a certain amount of infill and growth. At some point, the substation infrastructure will be stressed, and the City will be required to expend funds for new substations, for which these costs have not been built into the rate structure. The concept is to assign the costs to those who cause the impact in order to begin accruing funds until such time as a substation is needed. Staff is recommending the adoption of a substation transmission system charge that would apply to new development outside of the current City boundaries (as of August 1, 2006). A new substation would cost \$7.8 million. Staff is proposing that an escalator be built into the fee structure in order to be current with escalating prices. A typical residential home would be assessed a one-time fee of \$820 that would be paid through the developer. For the small number of large manufacturing customers, the one-time charge would be \$164,000. Mr. Morrow did not anticipate the funds to grow to \$7.8 million by the time a new substation was needed and stated that, if additional funds were necessary, the City would need to consider alternatives to pay for it (i.e. issue bonds or increase rates).

Mayor Pro Tempore Johnson questioned if the City would have enough capacity to accommodate Delta College, to which Mr. Morrow stated that the City currently has two

substations in that part of town and he did not see the need for another one due to this additional demand. Mr. Morrow stated that the need to build a new substation in the next three to five years would most likely be to construct additional transmission lines to another point in the network. For example, if the Lodi project is built near White Slough, Electric Utility could wrap in the transmission lines to that project, which would integrate it into the grid; thereby, requiring the necessity for a new substation to terminate those lines. There is presently a site on Kettleman Lane to the west of Lower Sacramento Road, which the City owns and has begun preliminary work.

Further discussion ensued regarding new development versus existing customers and who benefits and pays for the substation charges. Mr. Morrow stated that, if the City has not accrued enough funds to pay for a substation for whatever reason (e.g. to interconnect to the west or to reliably serve a new project to the south), the customers will have to share in that cost until the City can accrue additional funds. Mayor Pro Tempore Johnson questioned how those who fronted the cost would be credited back the money, to which Mr. Morrow responded that he would return with scenarios to address this issue. Mr. King pointed out that, without this substation charge, the ratepayers would pay 100% for new substations costs.

In response to Council Member Hansen, Mr. Morrow stated that a substation takes roughly two years to build. Mr. Hansen believed that Lodi's slow growth rate of 0.3% did not warrant the need for a new substation within three to five years, to which Mr. Morrow clarified that the need for a new substation in that timeframe would not be tied solely to growth; it would also be for the termination of the circuits to the west and the need for interconnection. In addition, Mr. Morrow stated that growth also comes from new retail or commercial businesses (e.g. Blue Shield, Wal-Mart Supercenter, etc.). Mr. Hansen suggested that the reasons be made clear as to the need for a new substation, whether it is due to existing customers (i.e. more appliances in homes, more electricity being used, etc.) or tied strictly to growth.

In response to Mayor Hitchcock, Mr. Morrow confirmed that this escrow account will be insufficient for the first substation needed, as there will not be adequate time to build up the funds.

Council Member Mounce stated that she did not want to see the money collected for this purpose borrowed for any other need, as was done with the sewer and water funds collected to repair the aging sewer system.

Mayor Hitchcock stated that the City did not borrow and use those funds inappropriately; it was borrowed because not enough money had been collected in the impact fee account. Ms. Hitchcock expressed concern that the City was not putting enough into this account, which would require borrowing from other impact fees down the line.

Council Member Mounce believed that, if a promise is made to the public to build something or provide a service, the City should have the money available when the time comes and not continually borrow from one line item to another to make the cash flow.

Council Member Hansen clarified that the City borrowed money from the water and sewer infrastructure replacement fund to deal with the cost of the PCE/TCE clean up and litigation; Council's other option was to implement a hefty rate increase. It was a necessary decision to address the clean up and abatement order from the Regional Water Quality Control Board, and the Council should have the ability to balance the revenues and expenses to cover the costs of those matters with which the City is faced.

Hearing Opened to the Public

- Kevin Sharrar, Executive Director of the Building Industry Association (BIA) of the Delta, expressed his appreciation to the Council for providing an opportunity for the BIA to meet with staff regarding this issue.

Public Portion of Hearing Closed

MOTION / VOTE:

The City Council, on motion of Council Member Hansen, Johnson second, deferred the subject public hearing in order to give staff the opportunity to meet with interested parties and return to Council at a future date. The motion carried by the following vote:

Ayes: Council Members – Hansen, Johnson, and Mounce

Noes: Council Members – Mayor Hitchcock

Absent: Council Members – None

Abstain: Council Members – Beckman

NOTE: Council Member Beckman returned to his seat at the dais at 8:45 p.m.

- I-3 Notice thereof having been published according to law, an affidavit of which publication is on file in the office of the City Clerk, Mayor Hitchcock called for the public hearing to consider introducing an ordinance amending Chapter 13.20, "Electrical Service," by amending Section 13.20.225, Schedule NEM (Net Energy Metering), and adding Section 13.20.227, Schedule CEM (Co-Energy Metering Rider), both applicable to qualified, customer-installed solar and wind generation, to become effective on November 1, 2006.

Electric Utility Director Morrow reported that state law requires the City to purchase wind and solar energy from its customers. Net metering is for smaller installations at ten kilowatts (KW) or less, and co-metering is for installations larger than ten KW. There is one meter for net metering, which measures both the power the City delivers to the customers and the power delivered back to the City from solar/wind. As a result, the customer is paid the full retail rate for the energy provided to the City. On the pricing side, the City sells at full retail rate and, under net metering, buys at the full retail rate. The alternative to buying solar/wind energy is the wholesale energy price market, which presently is half that price. The City is paying twice what the alternative is; however, the law is clear that it cannot do anything about that up to 10 KW. For those larger than 10 KW, the City can offer co-energy metering, which utilizes two meters: one sends electricity to the customer and is measured separately; the other measures the energy coming in from the solar/wind. Staff is proposing that, instead of buying the solar/wind from the large installations at the same price the City is selling it, the City pay an amount equal to the wholesale market price. State law provides that public benefit charges, which is 2.85% of customer charges, are non-by-passable and the rate has been cleaned up to be consistent with the law. Additionally, state law provides that utilities do not have to buy electricity over and above what it is selling for; therefore, if, after a 12-month period, a customer has installed larger generation than what it is purchasing from the City, the utility is not required to buy it; it is turned over to the utility. Currently, the law provides that net metered customers can pay their bills once a year; however, co-metered customers can be required to pay monthly, which has been included in the proposal. Electric Utility is required to offer this program for 2.5% of the peak load (or 3,500 KW), and presently, the City has approximately 150 KW of generation participating or scheduled to be on-line soon. At 2.5% of the peak load and without this co-metering tariff, the City could lose \$750,000 per year.

In response to Council Member Mounce, Mr. Morrow stated that the City is allowed to pass on the price of the meters to the customers, which cost under \$100 each.

In response to Mayor Hitchcock, Mr. Morrow stated that he believed the City would not exceed 2.5% of the peak load.

Hearing Opened to the Public

None.

Public Portion of Hearing Closed

MOTION / VOTE:

The City Council, on motion of Council Member Hansen, Mounce second, unanimously introduced Ordinance No. 1786 amending Chapter 13.20, "Electrical Service," by amending Section 13.20.225, Schedule NEM (Net Energy Metering), and adding Section 13.20.227, Schedule CEM (Co-Energy Metering Rider), both applicable to qualified, customer-installed solar and wind generation, to become effective on November 1, 2006.

RECESS

At 8:59 p.m., Mayor Hitchcock called for a recess, and the City Council meeting reconvened at 9:11 p.m.

J. COMMUNICATIONS

J-1 Claims filed against the City of Lodi – None

J-2 Appointments – None

J-3 Miscellaneous

- a) Interim City Clerk Perrin presented the cumulative Monthly Protocol Account Report through August 31, 2006.

K. REGULAR CALENDAR

K-1 "Status of Code Enforcement regarding mobile food vendors"

Mayor Hitchcock announced that Araseli Del Castillo would serve as the Spanish translator for anyone requiring assistance with their comments.

Joseph Wood, Community Improvement Manager, reported that on July 19, Council directed staff to proceed with an enforcement project using existing City codes. Code Enforcement staff commenced with the enforcement program on August 7, which was broken into three phases.

Phase 1

Notices were sent listing the general land use requirements; primarily, that business is to be conducted within an enclosed building. Additionally, staff identified other land use, safety, and nuisance issues that were particular to each site and informed vendors that the regulations prohibit them from operating on private property. Copies of pertinent regulations were provided to the vendors that apply to operations moving to the public right of way, which includes the following requirements: ten-minute restriction at one location; must move at least 100 feet from original location; no traffic hazard be created; and remain 300 feet away from a school site and 100 feet away from intersections controlled by a four-way stop or traffic signal. Further, staff informed vendors of the code section allowing for a special permit issued by the City Council that would allow them to remain in one location

on the public right of way for longer than ten minutes, similar to what was issued to Lou Fugazi for his hot dog stand in front of the U.S. Post Office, as well as the vendors at the street faire and farmers markets. Phase 1 generated many inquiries and concerns from the vendors; therefore, Code Enforcement provided a memo to the vendors clarifying the enforcement action (filed), which was printed in both English and Spanish, and held a meeting with the vendors, various customers, and representatives from the Lodi District Chamber of Commerce and its Hispanic Business Committee to further address their concerns. At the conclusion of the meeting, the vendors made it clear that they would request Council reconsider this matter. The Chamber Hispanic Business Community has expressed support for the vendors, as well as support for the City's concerns regarding sanitation, traffic, and safety issues, and has expressed its desire to work together to resolve these issues. Code Enforcement staff has received feedback from some local restaurants regarding the impact of mobile food vendors; some feel there is no direct competition, while others do. Of the first five locations that received notices of violation along Cherokee Lane, three are in compliance and two are not. Staff does not intend to follow up with a compliance inspection until all vendors are operating under the same conditions.

Phases 2 and 3 – Phases 2 and 3 are pending at this time.

Staff has noticed an increase in the number of complaints regarding pushcart vendors that are operating on streets and sidewalks, as well as complaints regarding other itinerant merchants. Mr. Wood pointed out that through the various meetings and discussions with the vendors it has been made clear that the enclosed building requirement would be applied to all of the vendors.

In response to Mayor Hitchcock, Mr. Wood stated that the enclosed building requirement was the only regulation the City had to directly address this type of operation on private property. Community Development Director Hatch added that this is a long-standing code section that was originally created to address mobile food vendors who visited construction sites in the industrial areas of town for a short duration of time before moving on to another location. The enclosed building requirement was a policy decision of Council at the time to address the itinerant merchants selling goods in the commercial areas. Over time, however, mobile trucks have begun to set up at permanent locations, which have constituted a new type of business model for which this code was not written. Staff, therefore, has reverted back to the original language in the municipal code. Council has the option to amend existing code to allow that type of service or enforce the current code section. Code Enforcement staff has begun the process of researching ordinances from other communities.

In response to Council Member Hansen, Mr. Wood explained that there is a municipal code section that allows for a special permit to be issued by the City Council to allow a vendor to operate from a fixed location on public property for longer than ten minutes. Mr. Hatch added that this provision is for location on public property; not private property.

In response to Mayor Pro Tempore Johnson, Mr. Wood stated that Code Enforcement receives complaints from residents on a regular basis, particularly at the Lodi Improvement Committee meetings, regarding unsightly conditions, encroachments into the public right of way, traffic impacts, garbage, and close proximity to residential areas.

Council Member Beckman questioned what the criteria was for approving a special permit to operate on public property, to which Mr. Wood responded that there is no clear criteria; however, the applicant must submit a proposal to Council, and, assuming it is approved, Public Works would issue an encroachment permit that would meet the City's insurance and liability requirements. Mr. Hatch added that these permanent vendors provide vitality and add a streetscape presence to the downtown, thereby, promoting a pedestrian-oriented experience. There was no timeframe associated with the issuance of the special permit,

with the exception of those participating in the street faire and farmers markets. Mr. Beckman expressed concern that this is a double standard of enforcing the ordinance for some, yet permitting others based upon the impulse of the Council.

PUBLIC COMMENTS:

- David LeBeouf stated that he represents approximately 30 mobile food vendors who are requesting that Council stay the code enforcement actions and that it review and revise the laws with respect to mobile food vendors. He stated that the ten-minute rule alone prohibits vendors from conducting their business as it typically takes up to 25 minutes to set up and another 30 to 40 minutes to serve customers. Mr. LeBeouf stated that he has served on committees for the cities of Stockton and Sacramento and assisted in updating their ordinances, which were antiquated and similar to Lodi's regulations, and he suggested the City contact these organizations to request copies. Further, Mr. LeBeouf explained that there is an alliance in Stockton, which is a large group of mobile food vendors that self enforce violations of the ordinance. He suggested that the City contact the Stockton City Attorney regarding the make up and functions of the alliance. Stockton's ordinance has been in effect for 16 to 18 months.

In response to Mayor Pro Tempore Johnson, Mr. LeBeouf stated that Modesto has a mobile food vendor ordinance; however, it is unique in that it has a specific area for vendors.

In response to Council Member Beckman, Mr. LeBeouf stated that case law prohibits cities from preventing mobile food vendors from operating on public right of way as it would be a restraint of trade; however, cities are obligated to provide for public health, safety and welfare. City Attorney Schwabauer disagreed with Mr. LeBeouf's characterization of the case, stating that it was a function of being pre-empted by the California Vehicle Code. Mr. LeBeouf clarified that the city of Stockton allows vendors to operate for three hours on the public right of way and it varies regarding private property, depending on the zoning.

Council Member Mounce questioned if the Stockton ordinance required mobile vendors to obtain the required licenses and certificates, to which Mr. LeBeouf replied in the affirmative.

- Andres Castro stated that ten minutes in one location is insufficient and does not allow enough time to reach the temperature required to properly cook food.
- Ray Crow represented himself as a consumer and stated that he has eaten at every mobile food vendor in Lodi as they offer a great low-cost meal. He questioned why the hot dog stand in front of the U.S. Post Office was not required to have restroom facilities, as it was pointed out that the vendors are so required. The elimination of mobile food vendors would not only negatively impact the vendors, but would also hurt established businesses who receive rent or income from those businesses that locate on their properties.
- Maria Lopez, representing Tacos Ochoa #1 and #2, stated that Community Development staff informed vendors at a meeting that the current enforcement action was a result of complaints received from the community and by Council Member Mounce. The vendors are concerned that they will be put out of business and expressed concern that there was no warning or communication between the City and the vendors. She further addressed some of the concerns in the September 8 memo from Community Development staff and stated that the vendors are required to secure the necessary permits, licenses, and certifications. She stated that she owns the commercially-zoned property on 310 Main Street, from which one of her taco trucks operates, and she questioned why she should be made to obtain a special permit when she owns the property. She requested that Council work with the vendors to address the concerns and to allow them to continue to operate.

Council Member Mounce explained that she brought this issue forward in order to respond to the many complaints she was receiving from east side residents and because of personal experiences she had that made her question the health and safety of these types of businesses. She apologized for the manner in which Council addressed this matter and felt confident that the City would find a solution to best serve the vendors, customers, community, and City.

- Guillermo Ruiz (as translated by Ms. Del Castillo) expressed concern that the City was putting the vendors out of business and that they would not be able to support themselves.
- Antonio Gonzalez (as translated by Ms. Del Castillo) stated that the vendors make sure to pick up the trash left by customers; however, it is difficult to do so when they have to move every ten minutes.
- Mirna Ruiz, chair of the Chamber of Commerce Hispanic Business Committee, stated that she operated a mobile food truck in the past and that the ten-minute period is unrealistic. The mobile food vendors offer a reasonably priced meal that is authentic, convenient, and economical to those who do not want to eat at a restaurant. The vendors are contributors to the community as business owners and community members who want to provide for their families. She requested Council grant special permits or another solution that would enable them to remain in business.

Council Member Hansen stated that he was in favor of staying the code enforcement actions until the City arrived at a solution, but he did not want to give a false impression that the City would issue special permits or exempt people from their own property. Mr. Hansen expressed interest in pursuing the idea of an alliance with rules that would allow it to operate and self police, which would provide a relief to the City.

- Luis Magaña (as translated by Ms. Del Castillo) expressed concern about the enforcement actions and stated that many of these people have worked a long time, they worked in the fields, and did not come here to work in taco trucks; however, they all want to better themselves and help this community. He hoped Council would make it possible for the vendors to continue to operate.

Mr. King stated that Council provided direction to move from a complaint-driven code enforcement program to a proactive program; however, it is difficult to enforce parking violations, banners, signs, etc., while un-permitted businesses such as the mobile food vendors are allowed to operate.

- Alberto Marquez expressed concern regarding the traffic hazards created by mobile food vendors, as well as potential health and safety issues, and requested that Council take this into consideration if it decides to allow these types of businesses.
- Jose Juarez (as translated by Ms. Del Castillo) thanked Council for its willingness to reconsider this matter and shared some of the difficulties of owning and operating a mobile food vehicle.
- Rosa Harnak, representing the Lodi District Chamber of Commerce, stated that the board will be discussing this issue at its next meeting on September 25. She further commented that many of these businesses were self funded and started without the assistance of loans.
- Espiranza Ortiz (as translated by Ms. Del Castillo) stated that her business was one of the first five who received a notice to stop and she complied immediately, after which she sold one of her two lunch wagons in response to this code enforcement action. Two of her family members are currently unemployed due to this action. She stated that garbage is always collected after the customers leave and every attempt is made to keep the area clean.

Mayor Hitchcock applauded Ms. Ortiz for complying with the law, and Council Member Hansen expressed regret that this had to happen to her and her family.

MOTION:

Council Member Hansen made a motion, Hitchcock second, to stay all code enforcement efforts on mobile food vendors and begin the process to establish rules to meet the needs of the City and the community.

DISCUSSION:

Council Member Mounce also expressed interest in pursuing the idea of an alliance, as well as researching Modesto's ordinance, which would create a hub for the mobile vendors. Ms. Mounce read a prepared statement in Spanish.

Mayor Pro Tempore Johnson stated that Council has done a disservice to staff as the July 19 minutes show that clear direction was given to begin this code enforcement action. He was not opposed to reversing the direction and revisiting the matter, but he requested that the issue of itinerant merchants be included in future discussions.

Council Member Beckman asked Council Member Mounce what she would like to see included in the proposed ordinance, to which Ms. Mounce stated that her concerns were that the units were not self contained, the electrical wires presented a safety hazard, and that there is an impact to the neighbors when the vendors are located adjacent to a residence. She would like to see this issue go before the Planning Commission for review. She was pleased to see that the businesses are required to obtain all necessary permits, licenses, and certifications.

Council Member Beckman stated that the Council owes an apology to the staff, vendors, and customers for its handling of this matter and he stated he would vote against the motion.

VOTE:

The motion carried by the following vote:

Ayes: Council Members – Hansen, Johnson, Mounce, and Mayor Hitchcock
Noes: Council Members – Beckman
Absent: Council Members – None

Ms. Del Castillo translated into Spanish the above action taken by Council.

NOTE: Mayor Pro Tempore Johnson left the meeting at 10:56 p.m.

K-2 “Adopt resolution approving program guidelines of the Revolving Loan Fund for the City of Lodi’s Economic Development Jobs Program”

Joseph Wood, Community Improvement Manager, stated that, as a Community Development Block Grant (CDBG) funded program, economic development is recognized as an eligible activity for job creation for persons of low to moderate income. The Revolving Loan Fund (RLF) program would incorporate one to two loans per year, with the idea of providing additional CDBG funding each year to keep it going; although, the concept is that the program would become self sufficient at some point once funds are returned to the program. Mr. Wood highlighted the following program elements:

- No minimum or maximum loan amount.
- The job creation criteria would follow federal guidelines of one low or moderate income job for each \$35,000 loaned.
- For every dollar loaned, there would be an investment of \$3 by the business.
- The loan term is three to seven years.
- Interest rate would be near market rate.
- 100% collateral on the funds loaned with no unsecured loans being considered.

- Loan fees would be .5% up to 3% of the loan amount depending upon the various aspects of the loan.
- Applicant would pay costs associated with special services in order to qualify for the underwriting process.
- No pre-payment penalty and an option for payment deferral.
- Eligible uses would include infrastructure, off-site improvements, and land costs, with the understanding that building and construction costs would trigger the Federal prevailing wage requirements. Ineligible uses are those projects that do not meet the purpose of the program, including costs incurred prior to the submittal of the loan, the refinancing of existing debt, those located outside of Lodi, and any project that created a conflict of interest for an elected or appointed official or an employee. Additionally, projects that involve the relocation of residents or businesses trigger federal regulations regarding relocation assistance and would not be considered.

The loan application review would be handled in house by the City Manager's Office and Community Development with a qualitative review to determine if it meets the guidelines and the purpose of the program. It would then move to the program operator for a quantitative review, for which staff is proposing to utilize the San Joaquin County RLF Program as it has been in operation for a number of years and is well versed in these types of loans using federal funds. From this review, a credit memo would be sent to a loan advisory committee, made up of 3 to 5 local banking and business professionals and selected from a pool of 10 to 12 recommended by the Council. The committee would then make a recommendation to the City Manager that would set forth the terms and conditions of the loan, after which the City Manager would have the final decision on the approval or denial of the loan. If the loan is approved, the loan documents would be prepared, and Farmers and Merchants Bank has agreed to participate with this process. Following the closing, the San Joaquin County RLF Program would handle the program servicing and monitoring, payment processing, delinquent accounts, reporting and monitoring, and verification of income for job creation.

In response to Mayor Hitchcock, Mr. Wood stated that the loan document includes standard language that anything from the business can be used as collateral and there would need to be a value given to the assets used as collateral to match the amount of funds loaned.

PUBLIC COMMENTS:

- Kevin Stevens questioned why the City wishes to get into the loan business, how many City employee jobs would be created to handle this loan program, and why the Council is not involved in the final decision-making process. He pointed out that the San Joaquin County Board of Supervisors makes the final decision on the loans in the San Joaquin County RLF Program.

Mr. King responded that this program represents opportunities for the City to stimulate businesses, create jobs for the community, improve the tax base, and benefit the targeted income group. The funds are paid back and reprogrammed to use again, which allows the City to retain the value of federal funds into the future versus one-time allocations. He did not anticipate that this program would be any more burdensome upon staff than administration of any other typical CDBG grant program. In regard to Council involvement, the primary concerns are the issues of meeting the Brown Act and the Public Records Act requirements and the fact that personal credit information would remain confidential with the loan committee as opposed to the Council.

Carlene Bedwell, Managing Principle of Applied Development Economics and the City's consultant on this program, agreed that the final decision on loans through San Joaquin County RLF Program are made by the County Board of Supervisors; however, it is structured in that the loan committee has the majority of the authority with the final decision resting with the Board in a somewhat automatic action.

Council Member Hansen questioned if this program receives automatic funding every year or would Council still have the opportunity to weigh this program against other community projects, to which Mr. King responded that the funding for this program has been allocated for one year only. Staff would like to evaluate the program this first year.

In response to Mayor Hitchcock, Mr. Wood confirmed that the San Joaquin County RLF Program has agreed to process the first loan throughout the entire term pro bono in order to determine a reasonable fee for servicing the program.

Ms. Bedwell stated that the benefit of going with the County RLF Program initially is that it has the processes and systems in place and it believes it can easily add additional loans to those it already has in place. Private firms can charge anywhere from 1% or \$9 for every monthly statement, and she believed the fee determined by the County RLF Program would be very reasonable. She added that there is CDBG administrative money available for use in monitoring compliance.

Mayor Hitchcock expressed support for approving the first two loans; however, she preferred that Council act as the final authority in approving the loans.

MOTION / VOTE:

The City Council, on motion of Mayor Hitchcock, Hansen second, adopted Resolution No. 2006-177 approving program guidelines for the Revolving Loan Program, which is the key element of the Community Development Block Grant funded Economic Development Jobs Program, for the first two loans and adding a component for final approval by the City Council. The motion carried by the following vote:

Ayes: Council Members – Beckman, Hansen, Mounce, and Mayor Hitchcock

Noes: Council Members – None

Absent: Council Members – Johnson

VOTE TO CONTINUE WITH THE REMAINDER OF THE MEETING

The City Council, on motion of Mayor Hitchcock, Mounce second, unanimously voted to continue with the remainder of the meeting following the 11:00 p.m. hour.

K. REGULAR CALENDAR (Continued)

- K-3 “Approve expenses incurred by outside counsel/consultants relative to the Environmental Abatement Program Litigation and various other cases being handled by outside counsel (\$130,186.10)”

City Attorney Schwabauer reviewed expenses as were outlined in the staff report (filed).

MOTION / VOTE:

The City Council, on motion of Council Member Mounce, Beckman second, approved the expenses incurred by outside counsel/consultants relative to the Environmental Abatement Program Litigation and various other cases being handled by outside counsel in the amount of \$130,186.10, as detailed below, by the following vote.

Ayes: Council Members – Beckman, Hansen, Mounce, and Mayor Hitchcock

Noes: Council Members – None

Absent: Council Members – Johnson

Folger Levin & Kahn - Invoices Distribution

Matter No.	Invoice No.	Date	Description	Water Acct. Total Amount
8002	96861	7/30/2006	People v. M&P Investments	\$ 22,047.56
				\$ (650.00)
8003	96862	7/30/2006	Hartford Insurance Coverage Litigation	\$105,045.76
				\$ (2,840.00)
8008	96863	7/30/2006	City of Lodi v. Envision Law Group	\$ 5,062.38
	13606	7/30/2006	Keith O'Brien/PES Environmental, Inc.	\$ 225.00
	6268	6/30/2006	Peter Krasnoff, West Environmental Service	\$
<u>292.50</u>				
				\$129,183.20

Kronick Moskovitz Tiedemann & Girard - Invoices Distribution

Matter No.	Invoice No.	Date	Description	Total Amount	Distribution	Water Acct.
11233.019	227478	08/25/06	Claims by Environmental Consultants	\$ 267.70	100351.732	267.70
11233.027	227478	08/25/06	Citizens for Open Govt. v. City of Lodi	\$ 107.95	107.95	
11233.029	227478	08/25/06	AT&T v. City of Lodi	\$ 627.25	627.25	
				<u>\$1,002.90</u>	<u>735.20</u>	<u>267.70</u>

L. ORDINANCES

None.

M. ADJOURNMENT

There being no further business to come before the City Council, the meeting was adjourned at 11:30 p.m.

ATTEST:

Jennifer M. Perrin
Interim City Clerk